

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:
S.B. NO. 2576, S.D. 1, RELATING TO PROSTITUTION.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 22, 2012 **TIME:** 2:45 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General (the "Department") appreciates the intent of this bill in trying to protect people forced into prostitution, but must oppose it due to significant legal concerns.

The purpose of this bill is to authorize a person convicted of a prostitution-related offense to file a motion to discharge the judgment of conviction under certain circumstances. It also establishes procedures for the motion to discharge judgment.

The criminal justice system already has in place processes that allow convicted defendants to appropriately challenge judgments of conviction. A convicted defendant has a right to appeal the conviction to an appellate court and challenge the lower court proceedings. After that, a convicted defendant also has the ability to challenge a conviction in a post-conviction relief proceeding, such as the one set up by Rule 40 of the Hawaii Rules of Penal Procedure. These processes have been developed and established to ensure fairness and justice for all in the criminal justice system. The process in this bill, however, to discharge prostitution convictions, is inconsistent with our criminal justice system and invites misuse and abuse.

The proposed justification for this special relief is that "the defendant's participation in the offense was the result of the person having been a victim" of promoting prostitution or a trafficking offense. The implication is that the defendant committed the offense under duress and, therefore, should not be held responsible for the crime.

PROCESS INVITES MISUSE AND ABUSE

This is a scenario that could result from this bill. A defendant is arrested for the crime of prostitution and taken into police custody. During the course of the criminal investigation, the defendant has an opportunity to tell the police investigator that the defendant was being forced to engage in prostitution by another person. If the defendant discloses this information during the investigation and the investigator is able to confirm the information, the defendant would likely be treated as a victim and witness in a case against the one promoting the prostitution activity. The defendant would likely not be prosecuted for prostitution. Under section 702-231, Hawaii Revised Statutes (HRS), duress is a defense to a penal charge. If the defendant does not disclose the information, then the investigator would have no reason to treat the defendant as a victim or witness, and would not be able to investigate the promoting prostitution offense. Defendant would be investigated and prosecuted for the prostitution activity, and could ultimately be convicted based on evidence that proves the commission of the offense beyond a reasonable doubt. Possibly a year or more later, defendant files a motion to discharge the conviction alleging that defendant participated in the prostitution conduct because defendant was forced to do so by somebody. Defendant does not even name the person involved but merely alleges being forced to engage in the activity. But the prosecutor and investigator, having had no opportunity to investigate and corroborate defendant's allegations of forced prostitution or trafficking at the time of defendant's arrest and prosecution because of defendant's failure to disclose any of these allegations at that time, have no evidence to rebut defendant's allegations. That being the case, the court would grant the motion to discharge the judgment and dismiss the matter.

The prosecution, despite following all the laws and procedure, and proving defendant's guilt beyond a reasonable doubt, is left with no ability to challenge defendant's late allegations and defend the judgment of conviction. As written, the process is unfair, unjust, and invites misuse and abuse.

The Department notes that if the motion to discharge conviction was allowed only if the case prosecutor consented to the motion, the Department's concerns of misuse and abuse of the motion would be greatly reduced.

UNCERTAINTY OF THE REQUIRED PROOF

The bill provides that a defendant's judgment of conviction for a prostitution offense may be discharged if:

[T]he person's participation in the offense was the result of the person having been a victim of:

- (a) Promoting prostitution in the first degree under section 712-1202; or
- (b) A severe form of trafficking in persons as defined in title 22 United States Code section 7102 (13).

But the bill is not clear as to what burden of proof would be required to **prove that the defendant was a victim of one of these specified crimes**. It appears that the bill simply requires the defendant, a year or more after conviction, to allege that the defendant was forced to engage in prostitution by another person, an allegation that the prosecution could not contest. The bill does not appear to require much more than a statement from defendant. It does not appear to require that a prosecution of one of these specified crimes needs to have taken place, that someone was convicted of one of these crimes, and that the person's victimization, at the time of the conduct that resulted in the prostitution conviction, was brought out and proven in the prosecution of a specified crime. It is not even clear that the identity of the alleged perpetrator of the promoting prostitution or trafficking offense needs to be disclosed or established.

THE TIME PERIOD WITHIN WHICH THE MOTION MUST BE MADE

On page 2, at lines 10-17, the bill requires that the motion to discharge judgment of conviction:

Be made within a reasonable period of time after the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the person, family members of the person, or other victims of the trafficking that may be jeopardized by the bringing of a motion, or for other reasons consistent with the purpose of this section[.] [Emphases added.]

This provision contains a significant amount of vague and ambiguous wording. A "reasonable period" subject to "reasonable concerns" or "other reasons consistent with the purpose of this section," is unclear. A "reasonable period of time after the person ceases to be a victim" is also vague and ambiguous. It is unclear when a person ceases to be a victim of prostitution or

trafficking. It is unclear, if the person leaves the alleged trafficker, but continues to engage in prostitution on their own or while working for someone else, whether the person ceased to be a victim. It is unclear, if the person who engaged in the promoting prostitution activity stopped using any force or coercion on the person, and the person continued to engage in prostitution activity, whether the person ceased to be a victim.

OFFICIAL DOCUMENTATION TO CREATE A PRESUMPTION

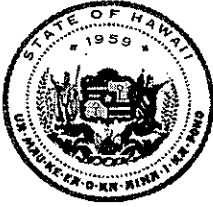
On page 3, at lines 1-8, the bill provides:

Official documentation of the defendant's status as a victim of trafficking or a victim of a severe form of trafficking from a federal, state, or local law enforcement agency shall create a presumption that the person's participation in the offense of prostitution was a result of having been a victim of trafficking or a victim of a severe form of trafficking, but shall not be required for granting a petition under this subsection.

The Department is concerned that this provision does not clearly establish a required nexus between the defendant's status as a victim and the prostitution crime for which defendant was convicted. The fact that the defendant may have been a victim of trafficking in an unrelated instance does not mean that defendant's participation in the offense for which defendant was convicted was due to the defendant being a victim of trafficking.

CONCLUSION

For the foregoing reasons, the Department respectfully requests that this bill be held. The Department notes that if the motion to discharge conviction was allowed only if the case prosecutor consented to the motion, the Department's concerns of misuse and abuse of the motion would be greatly reduced.



Office of the Public Defender State of Hawaii

Timothy Ho, Chief Deputy Public Defender
Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary



March 22, 2012, 2:45 p.m.

RE: S.B. 2576 SD1, HD1: Relating To Prostitution

Chair Keith-Agaran and Members of the Committee:

The Office of the Public Defender supports the intent of S.B. 2576, but has some concerns about the implementation of such a law.

Many women engage in acts of prostitution due to their vulnerability as result of their youth, family situation and/or substance abuse. Those individuals who were forced into engaging in prostitution should be encouraged to leave the profession, and the ability to clear their record would help them to further their educational and employment goals, as well as wipe their record (psychologically) clean.

We have a few questions and concerns about the language in this measure. What constitutes a reasonable time period? Due to space and manpower limitations, our office keeps our files for a limited time period. We do not have the capability to keep files for an extended period of time. Who files the motion on behalf of the former prostitute?

We find this measure to be procedurally vague. We also believe that this committee should extend this measure to all women, men and transgender individuals who leave a life of prostitution who would not be able to prove that they were forced or coerced into prostitution. We suggest that this issue be referred to an inter-agency committee or task force to address the expungement of prostitution convictions for all individuals who leave the profession. We thank you for the opportunity to testify on this measure

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-6552

KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawai'i

Thursday, March 22, 2012

RE: S.B. 2576, S.D. 1, H.D. 1; RELATING TO PROSTITUTION.

Chair Keith-Agaran, Vice Chair Rhoads, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony expressing strong concerns regarding S.B. 2576, S.D. 1, H.D. 1 that authorizes a person convicted of committing the offense of prostitution to file a motion to vacate the judgment. Appealing to a higher court or Rule 40 of the Hawaii Rules of Penal Procedure currently would be the better way to achieve the policy goal of S.B. 2576, S.D. 1, H.D. 1. Moreover, there are a number of problems in this bill, which we will point out as well.

Under Rule 40(a)(1) of the Hawaii Rules of Penal Procedure, a person may seek relief on the following grounds:

- (i) that the judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawai'i;
- (ii) that the court which rendered the judgment was without jurisdiction over the person or the subject matter;
- (iii) that the sentence is illegal;
- (iv) that there is newly discovered evidence; or
- (v) any ground which is a basis for collateral attack on the judgment.

The department is aware that newly discovered evidence may come up in prostitution cases, and even if it was known to the petitioner and it was not raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or any other proceeding, the petitioner can prove the existence of extraordinary circumstances to justify the petitioner's failure to raise the issue.

Moreover, a petitioner who was under “duress” to perform prostitution--where such duress continued throughout the court proceedings--has a strong basis for a collateral attack on the judgment. In the interest of justice, the Department of the Prosecuting Attorney of the City and County of Honolulu is open to hearing such issues in a Rule 40 hearing.

To date, our department has not heard of any situation where a victim of trafficking or other forms of forced prostitution have been precluded from using Rule 40 of the Hawaii Rules of Penal Procedure. We have made previous requests for advocates to send us case examples, but have not received any yet.

For these reasons, we recommend S.B. 2576, S.D. 1, H.D. 1 be deferred by the committee because of the problems we mentioned in the bill, and Rule 40 of the Hawaii Rules of Penal Procedure is currently available for persons who seek relief such as discharging a case.

However, if the committee intends to pass this bill, our department would like to amend the bill with the following suggestions listed below:

First, we recommend deleting the following language in S.B. 2576, S.D.1, H.D. 1 that is located on page 3, lines 1 to 8:

“(4) Official documentation of the defendant's status as a victim of trafficking or a victim of a severe form of trafficking from a federal, state, or local law enforcement agency shall create a presumption that the person's participation in the offense of prostitution was a result of having been a victim of trafficking or a victim of a severe form of trafficking, but shall not be required for granting a petition under this subsection.”

Also, we recommend including language requiring the prosecuting attorney of the appropriate jurisdiction to sign and consent to the motion to discharge the conviction.

We have expressed our willingness to work with advocates on this important issue and will continue to do so. Thank you for the opportunity to testify.



THE PACIFIC ALLIANCE
TO STOP SLAVERY

DATE: March 20, 2012

ATTN: COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair
Rep. Tom Brower
Rep. Angus L.K. McKelvey
Rep. Rida T.R. Cabanilla
Rep. Joseph M. Souki
Rep. Mele Carroll
Rep. Clift Tsuji
Rep. Denny Coffman
Rep. George R. Fontaine
Rep. Robert N. Herkes
Rep. Barbara C. Marumoto
Rep. Ken Ito
Rep. Cynthia Thielen

DATE: Thursday, March 22, 2012

TIME: 2:45p.m.

PLACE: Conference Room 325, State Capitol, 415 South Beretania Street

RE: **TESTIMONY IN SUPPORT OF SB 2576 SD1 HD1 WITH AMENDMENTS -
RELATING TO PROSTITUTION**

Dear Committee on Judiciary:

The Pacific Alliance to Stop Slavery (PASS) is in strong support of SD 2576 SD1. PASS serves victims of Human Trafficking for sex or labor in the state of Hawaii and has a support base of over 7000 persons.

This bill will allow survivors who have been intimidated, forced, or defrauded into prostitution to file motions to petition the court to vacate convictions of prostitution offenses suffered while in servitude under their pimp/traffickers. Passing this bill into law is simply the right thing to do.

Victims of sex-trafficking, when rehabilitated and ready to enter back into society, face serious repercussions, societal bias, shame, sexual harassment and other debilitating factors when having to divulge prostitution on their records when they were held in sexual slavery against their will. They are the victims not the criminals.



PASS urgently requests that the committee revert the language of this bill from “discharging” convictions back to the original language of “vacating” convictions. Discharging convictions greatly differs from vacation convictions.

PASS is also in agreement with the Imua Alliance with its suggested amendments to this bill and suggests that the committee adopt those changes.

We respectfully disagree with the Prosecutor’s Office that the existing Rule 40 is an effective alternative to vacating convictions. Many factors prohibit Rule 40 from allowing victims of sex-trafficking or promoting prostitution in the first degree to access the justice they deserve. One example is that convicted victims must apply with the Prosecutor’s office for this ability to expunge their records and not rely on a higher judicial power.

Additionally expungement of a conviction greatly differs from a vacating of conviction. Victims are not criminals whose pass “crimes” must be expunged or pardoned. They are victims who often are re-victimized through our system which misidentifies them as somehow complicit with their own criminal exploitation. As such, these victims deserve vacating of any conviction as a result of this systemic misidentification.

Thank you very much for hearing this much needed legislation.

Sincerely,

Kathryn Xian
Executive Director
Pacific Alliance to Stop Slavery



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

TESTIMONY FOR SENATE BILL 2576, SD1, HD1, RELATING TO PROSTITUTION

**House Committee on Judiciary
Hon. Gilbert S.C. Keith-Agaran, Chair
Hon. Karl Rhoads, Vice Chair**

**Thursday, March 22, 2012, 2:45 PM
State Capitol, Conference Room 325**

Honorable Chair Keith-Agaran and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in support, with proposed amendments for SB 2576, SD1, HD1, relating to prostitution.

Last year, lawmakers passed HB 141 and HB 240, the former of which outlawed labor trafficking in the islands and the latter of which strengthened existing anti-prostitution laws by expanding witness protection for victims and targeting repeat offenders, particularly pimps and johns. Both bills were important steps in rectifying Hawaii's poor image and record with regard to anti-trafficking statutes. Importantly, these new laws focus on demand for labor and sex trafficking, signaling our state's move toward combating those most responsible for trafficking violations—pimps, johns, owners and managers of prostitution houses, and traffickers themselves—while protecting those who are most vulnerable.

The IMUAlliance lauds the State Legislature's efforts, last session. At the same time, we call upon lawmakers to continue the fight against human trafficking by hearing and advancing bills that increase services afforded to victims. To that end, the IMUAlliance strongly supports the enactment of "vacating convictions" legislation authorizing a person convicted of committing the offense of prostitution to file a motion vacating an adverse judgement. Disclosure of criminal convictions, including misdemeanor convictions, is often required for employment and housing applications. Since victims of sex trafficking and coerced prostitution are acting against their will—effectively, in a condition of slavery—they should not be held accountable for their actions in a manner that could prevent the obtainment of stable residency or entry into and matriculation through the workforce, both of which are required for successful recovery from involuntary sexual servitude.

That said, we feel that the following amendments would strengthen the measure. To begin, we feel that this measure would benefit from the addition of more clearly enumerated juridical procedures for vacating, rather than discharging, convictions. Accordingly, we encourage your committee to replace all of this bill's references to "discharge" with "vacate" judgement. We also urge you to revise Section 2, subsection (2) of this bill to read:

(2) A motion filed under this section shall:

(a) Be ~~in writing~~ typewritten or legibly handprinted;

(b) Be signed and sworn to by the petitioner;

(c) Be subject to the review, approval, and certification of the attorney general;

(d) Be made within a reasonable of time ~~six years~~ after the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of the trafficking that may be jeopardized by the bringing of a motion, or for other reasons consistent with the purpose of this section; and

(e) Describe the evidence ~~all the grounds and evidence for vacation of a conviction which are available to the petitioner and of which the petitioner has or by the exercise of reasonable diligence should have knowledge,~~ and provide copies of any official documents showing that the defendant is entitled to relief under this section.

Relatedly, we encourage your committee to use this bill as a vehicle for extending the statute of limitations prescribed in HRS §667J-7 from two to six years, thereby bringing the statute of limitations for claims made under the prostitution coercion liability act into consonance with the statute of limitations contained in HRS §701-108(2)(b) for class A felonies, which includes continuous sexual assault of a minor as outlined in HRS §707-733.6. For clarity, we believe that frequently cited cases of coercion into prostitution by members of a victim's family or household, as well as the ongoing subjection of coerced persons into acts of prostitution over extended periods of time, necessitates statutory correspondence with laws criminalizing other *continuous* sex crimes, especially involving family or household members, such as the aforementioned HRS §707-733.6. To accomplish this change, we suggest the following amendment:

Section 663J-7, Hawaii Revised Statutes, is amended to read as follows:

"~~[H]~~§663J-7~~[H]~~ Statute of limitations. (a) A claim under this chapter may not be brought against a person more than ~~[two]~~ six years after an act of promoting prostitution by coercion by that person.

(b) The limitation period provided for in this chapter is tolled:

(1) During the minority of the individual who engages in prostitution; [øø]

(2) Any time there is a criminal offense investigation being actively conducted against the defendant by a governmental agency or there is a criminal offense charge, information, or indictment pending against the defendant[-];

(3) Until the plaintiff discovers that an act of promoting prostitution by coercion has occurred and that the defendant caused, was responsible for, or profited from the act of promoting prostitution by coercion; or

(4) If the plaintiff is a victim of a series of acts of promoting prostitution by coercion by the same defendant, until the last act of promoting prostitution by coercion has occurred.

(c) A statute of limitations defense may not be asserted if the defendant induced or attempted to induce the plaintiff to delay filing a claim under this chapter."

Additionally, we encourage you to use this measure as a vehicle for addressing the inconsistency in fines currently assessed for johns under HRS §712-1200(a) and (b) and other petty misdemeanor crimes. Currently, the maximum fine for someone convicted of a petty misdemeanor in Hawaii is \$1,000, but an exception is made for johns, who are subject to a lower mandatory fine of \$500. Thus, we encourage you to revise HRS §712-1200(a) and (b) to read:

(a) For the first offense, when the court has not deferred further proceedings pursuant to chapter 853, a mandatory fine of \$500 **\$1,000** and the person may be sentenced to a term of imprisonment of not more than thirty days or probation; provided that in the event the convicted person defaults in payment of the \$500 **\$1,000** fine, and the default was not contumacious, the court may sentence the person to perform services for the community as authorized by section 706-605(1).

(b) For any subsequent offense, a mandatory fine of \$500 **\$1,000** and a term of imprisonment of thirty days or probation, without possibility of deferral of further proceedings pursuant to chapter 853 and without possibility of suspension of sentence.

Finally, we encourage your committee to revise Section 2, subsection (7)(b) to read, "a person who pays agrees to pay, or offers to pay a fee to another to engage in sexual conduct." This technical amendments bring the language of this provision in line with related sections of the Hawaii Revised Statutes.

Again, the IMUAlliance thanks you for your hard work to stem human trafficking on our shores. Room for improvement remains, however, and we feel that the measure in question, with

minor amendments, will consecrate last year's momentum into a concerted movement. Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance

TESTIMONY

Harm Reduction Hawaii
c/o 1658 Liholiho St #205
Honolulu, HI 96822

To the House Committee on Judiciary
Regarding SB 2576,SD1,HD1 relating to prostitution
To be heard Thursday, March 22, 2012, at 2:45 PM in conference room 325

Dear Committee Members:

We support the intent of this bill that would allow persons convicted of prostitution to clear a criminal conviction. However, the bill itself is frankly disturbing in its attempt to focus only on persons who later claim they were victimized by pimps. This needless addition to the potential good that would come to former prostitutes seeking to get on with their lives pointlessly disenfranchises the majority of people it could help. It disenfranchises the many transgendered women who work in prostitutes. None of them ever are involved with pimps, but most of them need assistance when attempting to move away from sex work.

The additional requirement of claiming victimization status also leads to legal questions that have been objected to by the police and attorney general's office in earlier hearings. The fact that the proponents seem to hate any sex worker who does not pander to their victimization world view shouldn't keep the legislature from doing the right thing and amending this bill to simply void **all** prostitution convictions after a designated period, such as two years.

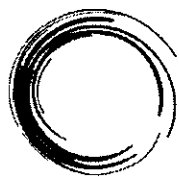
Sincerely:



Tracy Ryan
Executive Director, Harm Reduction Hawaii

(808) 534-1846

tracyar@hawaiiintel.net



POLARIS PROJECT

FOR A WORLD WITHOUT SLAVERY

TESTIMONY IN SUPPORT OF SB 2576 PRESENTED TO THE JUDICIARY COMMITTEE MARCH 22, 2012

Mr. Chairman and members of the Judiciary Committee:

On behalf of the more than 40,000 supporters of Polaris Project thank you for providing us with an opportunity to speak about the crime of human trafficking. My name is James Dold and I am Policy Counsel for the Polaris Project.

Polaris Project is a leading national organization dedicated to combating human trafficking within the United States by serving victims, raising public awareness, and engaging in policy advocacy at both the State and Federal level. We have been selected by the U.S. Department of Health and Human Services to be its training and technical assistance provider and have operated the National Human Trafficking Resource Center and Hotline since December 2007. During this time our human trafficking call specialists have fielded over 48,000 calls from across the nation. We have also provided victim services to more than 500 survivors of human trafficking since 2004 in our D.C. and New Jersey client service offices.

I would like to take a moment to specifically thank Senator Chun Oakland for introducing SB 2576. We greatly appreciate the Hawaii Legislature's concern for and willingness to address the crime of human trafficking, a grave violation of human rights.

SB 2576 – Vacating Convictions for Sex Trafficking Victims

SB 2576 is a critical component of Hawaii enacting a comprehensive legal framework to combat human trafficking. It will allow victims of human trafficking who were forced into prostitution to file a motion to have unjust convictions for prostitution vacated from their record.

Often times, victims of sex trafficking are held in conditions of slavery for months or even years. During that time they are likely to have come into contact with law enforcement and be arrested for prostitution-related offenses. Because they are not always identifiable once picked up off the street, sometimes these victims can go

through the system and be convicted or even plead guilty to having engaged in prostitution. These convictions inhibit the ability of these victims to move forward with their lives because they can no longer apply for certain jobs, loans, or go back to school as a result of the stigma that is attached to having to report a conviction for prostitution. This bill will permit these victims to seek redress in Hawaii's courts and ultimately allow them a clean slate once they have been rescued from their trafficking situation.

Polaris Project initially began working on these Vacating Convictions bills as we came to realize that the victims of trafficking we were serving in the D.C., Virginia, and Maryland areas had difficulty seeking employment or going back to school as a direct result of these convictions. This is a new, innovative tool we have to enable victims of human trafficking to move forward with their lives once they've been rescued. New York was the first state to pass this legislation in 2010 and it received strong support by the legal community. In 2011, Polaris Project helped to successfully pass additional laws in Illinois, Maryland, and Nevada. In 2012, several states have similar bills pending.

The need for this legislation cannot be over stated as we seek to create a comprehensive, victim-centered, legal framework to combat human trafficking in the great state of Hawaii. The 2007 Trafficking In Persons Report put out by the U.S. State Department endorsed this victim-centered approach that is captured by SB 2576:

“Confirmed trafficking victims should not be punished for crimes that are a direct result of being trafficked—such as not holding proper immigration documents or violation of prostitution, labor, or begging statutes. Trafficking victims should not be detained in criminal detention facilities, except in extreme circumstances. They should be treated as victims.”

It is our hope that the House Human Services Committee feels the same way about victims who have been forced into prostitution. That we should seek to allow those victims redress for unjust convictions rendered against them and endeavor to ensure that their transition to living a full and healthy life is met with understanding and compassion toward the situation and horrific crimes to which they have survived.

Attorney General Concerns

Polaris Project has spoken with the Attorney General's Office and is aware of their previous concerns with this legislation. As a result, we proposed several amendments that were adopted in the Senate that hopefully will alleviate their concerns.

We believe that our prior amendments adequately addressed many of the concerns raised by the Attorney General, as similar language has been adopted in Nevada, Illinois, and New York. Some of the language has been left intentionally broad so that judges can make the ultimate determination in granting a motion under this section. For instance, in *New York vs. G.M.*, 2011 NY Slip Op 21176 – NY, a case in which the District Attorney of Queens joined the petitioner in her motion to vacate her conviction, the petitioner had been a victim of trafficking in the late 1990's, but was unable to seek redress until this law was passed. Thus, the need to emphasize a "reasonable period of time" after the person ceases to be a victim of trafficking, taking into consideration the petitioner's safety, as well as the safety of others, is an important component of the bill especially for those persons who were victimized several years ago.

In the *G.M.* case, the petitioner had been beaten and permanently disfigured by her trafficker, raped repeatedly, and imprisoned against her will. Because her trafficker was also her husband and she was a foreign national from the Dominican Republic, she was vulnerable to becoming a sex trafficking victim and going through the criminal justice system undetected as a victim of a crime. Indeed, the factual background of her case stated:

"He exercised complete control over her, physically and psychologically, such that her every move was tracked by [DS] and she was not allowed to leave the room or apartment without him."

This type of control is typical in domestic pimp controlled sex trafficking where the pimp or trafficker controls every aspect of the victim's life, as indicated by notorious pimp Iceberg Slim:

"Fast, I got to find out the secrets of pimping. I really want to control the whole whore. I want to be the boss of her life, even her thoughts. I got to control them that Lincoln never freed the slaves."

-Ice Berg Slim (pimp/sex trafficker)

This is the mentality of pimps/traffickers and the reality facing victims of sex trafficking. It is likely that in many instances victims of sex trafficking will go undetected by law enforcement and prosecutors because they don't self-identify as victims and identify more with their trafficker. In these instances, where victims of sex trafficking are in fact slaves as a result of violence, isolation, and psychological and emotional manipulation that their traffickers use to control them, this remedy is

absolutely paramount to allowing a victim to be able to move on with their life after they have been rescued or escape.

We believe that the changes that were made in the Senate address the Attorney General's concern and that this bill is essential to victims of sex trafficking in Hawaii.

Recommended Amendments

Polaris Project is in full support of this bill. However, we urge the Committee to consider an amendment that would give judges broader discretion to take additional action as is necessary or as justice requires. We have included the proposed amendments at the end of our testimony.

Support SB 2576

Therefore, we strongly ask you and other members of the Judiciary Committee to vote favorably upon SB 2576 and bring justice to victims who have been denied it. If you should have any questions, please feel free to call me at (202) 745-1001, ext. 132. Mahalo.

-James L. Dold, J.D.
March 22, 2012

PROPOSED AMENDMENTS TO SB 2576

Additions appear in all CAPS and are **bolded**; deletions appear with a ~~strike~~ mark.

In Section 2, add the following language:

(5) If the court grants a motion filed under this section, the court shall vacate the conviction and dismiss the accusatory pleading **AND MAY TAKE ADDITIONAL ACTIONS AS IS APPROPRIATE IN THE CIRCUMSTANCES OR AS JUSTICE REQUIRES.**

NEW BILL LANGUAGE

The bill should now read:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to authorize a person convicted of committing the offense of prostitution to file a motion to vacate the judgment under certain circumstances and to establish procedures for the motion to vacate.

SECTION 2. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712- **Prostitution; motion to vacate judgment.** (1) A person convicted of committing the offense of prostitution under section 712-1200, loitering for the purpose of engaging in or advancing prostitution under section 712-1206, street solicitation of prostitution in designated areas under section 712-1207, or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206, or 712-1207, may file a motion to vacate the conviction if the defendant's participation in the offense was the result of the person having been a victim of:

- (a) Promoting prostitution in the first degree under section 712-1202; or
- (b) A severe form of trafficking as defined in title 22 United States Code section 7102(13).

(2) A motion filed under this section shall:

- (a) Be in writing;
- (b) Be made within a reasonable period of time after the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of the trafficking that may be jeopardized by the bringing of a motion, or for other reasons consistent with the purpose of this section; and
- (c) Describe the evidence and provide copies of any official documents showing that the defendant is entitled to relief under this section.

(3) The court shall hold a hearing on a motion filed under this section if the motion satisfies the requirements of subsection (2); provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted.

(4) Official documentation of the defendant's status as a victim of trafficking or a victim of a severe form of trafficking from a federal, state, or local law enforcement agency shall create a presumption that the person's participation in the offense of prostitution was a result of having been a victim of trafficking or a victim of a severe form of trafficking, but shall not be required for granting a petition under this subsection.

(5) If the court grants a motion filed under this section, the court shall vacate the conviction and dismiss the accusatory pleading and may take additional actions as is appropriate in the circumstances or as justice requires.

(6) A person making a motion to vacate pursuant to this section has the burden of proof by a preponderance of the evidence.

(7) This section shall not apply to a motion to vacate a conviction under this chapter for:

(a) Promoting prostitution; or

(b) A person who offers a fee to engage in sexual conduct with another person.

(8) For the purposes of this section:

"Official documentation" includes a police report, court record, or affidavit generated from a federal, state, or local law enforcement agency.

"Victim of trafficking" and "victim of a severe form of trafficking" shall have the same meaning as in title 22 United States Code section 7102."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2050.

Testimony for SB2576 on 3/22/2012 2:45:00 PM

Testimony for SB2576 on 3/22/2012 2:45:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, March 21, 2012 6:16 PM

To: JUDtestimony

Cc: breaking-the-silence@hotmail.com

Testimony for JUD 3/22/2012 2:45:00 PM SB2576

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Dara Carlin, M.A.

Organization: Individual

E-mail: breaking-the-silence@hotmail.com

Submitted on: 3/21/2012

Comments:

Christopher D. Yanuaria
1800 East-West Road
Honolulu, HI 96822

Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

COMMITTEE ON JUDICIARY

Thursday, March 22, 2012 2:45pm

State Capitol, 415 South Beretania Street, Conference Room 325

RE: SB 2576, SD1, HD1 RELATING TO PROSTITUTION

Authorizes a person convicted of committing the offense of prostitution to file a motion to discharge the conviction under certain circumstances. Establishes procedures for the motion to discharge. Effective July 1, 2050. (SB2576 HD1)

Aloha Chair Rep. Gilbert Keith-Agaran, Vice Chair Rep. Karl Rhoads, and Committee on Judiciary:

My name is Christopher Yanuaria, a graduate student at Myron B. Thompson School of Social Work and a Maui resident. I am testifying in **STRONG SUPPORT OF SB2576, SD1, HD1.**

SB 2576 is important because it will allow for discharging prostitution convictions where the defendant can show he or she was the victim of sex trafficking. Those who have been wrongfully convicted as “prostitutes” rather than “sex trafficking victims,” after they have been rescued, have a difficult time reintegrating back into society because their criminal record stays with them. Every time he/she goes in for a job interview, fills out a loan form, credit check, or visa application, he/she must disclose his/her arrests.

Also, engaging in “prostitution” carries much stigma, which makes it very difficult when a survivor of sexual slavery tries to find work and/or apply for citizenship.

I urge you to please support SB 2576 SD1 HD1.

Mahalo,

Christopher Yanuaria

Committee on Judiciary

Committee on Judiciary

Anthony Scimone [ascimone@hawaii.edu]

Sent: Wednesday, March 21, 2012 11:15 AM

To: JUDtestimony

Cc: rawleigh@hawaii.edu

Aloha,

I am a full time student at HCC. I just heard of this meeting and I support SB 2123, SB2576, and SB2579. I can't believe this is still happening on US soil. This must end. I hope my email makes a difference.

Warm Aloha Regards,

Anthony Scimone

committee of Judiciary: Thursday, March 22, 2012 meeting @ 2:45pm

committee of Judiciary: Thursday, March 22, 2012 meeting @ 2:45pm

Ashley Watanabe [awatanab@hawaii.edu]

Sent: Wednesday, March 21, 2012 11:16 AM

To: JUDtestimony

Aloha,

I am a student at Honolulu Community College and i just learned about how much human trafficking is going on not only in other states, but also in Hawaii.

I don't think that the girls that are found should be committed of a crime. The PIMPS should be. They are being forced into doing things that they don't want to do in the first place. This is all about saving their own lives.

SB 2123

SB 2576

SB 2579

I support all 3 of those bills. the pimps are the ones that should be prosecuted and convicted, NOT the girls.

committee on judiciary Thursday Mar. 22, 2012

committee on judiciary Thursday Mar. 22, 2012

William Sacapulo-Uepa [uepa@hawaii.edu]

Sent: Wednesday, March 21, 2012 11:17 AM

To: JUDtestimony

Aloha,

I am currently a student at honolulu community College and i heard about the Human Trafficking and i wanted to learn about it and i was terrified about what it is, and i wanted to support the stop to this madness. I am very sad to here how many young children have been force to sell them self. Thank you for taking your time to read this message. Mahalo

*SB2123

*SB2576

*SB2579

thank you,

Committee on Judiciary, THurs,Mar. 22,2012 meeting at 2:45 pm

Jeremiah Leota [leota7@hawaii.edu]

Sent: Wednesday, March 21, 2012 11:17 AM

To: JUDtestimony

Aloha,

I'm a student a HCC and in my English class, I learn about human trafficking and i was unaware of how many young teenage girls in Hawaii being abused by their victims and being used and forced into prostitution. I support all 3 bills because i believe that the pimps should be prosecuted because of their selfish crimes and for the crimes that they are doing is unacceptable. i believe that the girls should not be prosecuted and charge because of the pimps who were abusing them and forcing them into prostitution.

Committee on Judiciary Thurs. Mar. 22, 2012 meeting at 2:45 p.m.

Committee on Judiciary Thurs. Mar. 22, 2012 meeting at 2:45 p.m.

Glenn David Valencia [glenn8@hawaii.edu]

Sent: Wednesday, March 21, 2012 11:19 AM

To: JUDtestimony

Cc: rawleigh@hawaii.edu

Aloha,

I am currently a student at Honolulu Community College and I eventually learned and heard about the meeting/hearing at the State Capitol tomorrow. We learned about the bills of Human-Trafficking, and I think that this complete madness of hurting and forcing innocent girls and others who are going through this tragedy. So I am supporting these bills to help stop these Human-Trafficking, SB-2123, SB-2576, SB-2579...and I am hoping that this will end and help out even more for better days.

With warm Aloha and regards,

Glenn

committee on judiciary Thursday. march 22,2012 meeting at14:45

committee on judiciary Thursday. march 22,2012 meeting at14:45

Marlon Calventas [marlonac@hawaii.edu]

Sent: Wednesday, March 21, 2012 11:20 AM

To: JUDtestimony

Aloha,

I am a student in HCC and during class we are going over Human Trafficking. During class i've just realize that it is now rapidly growing in hawaii. the following bills i fully supported SB2123, SB2576, and SB2579. Don't convict the victims but the offenders. i believe that we should take the time for a investigation.

sincerely, Marlon Calventas

Re: Committee on Judiciary Thurs. Mar. 22, 2012 Meeting at 2:45 pm.

Re: Committee on Judiciary Thurs. Mar. 22, 2012 Meeting at 2:45 pm.

Patricia Afoa-Wong [afoawong@hawaii.edu]

Sent: Wednesday, March 21, 2012 11:09 AM

To: JUDtestimony

Aloha,

I am a student of HCC, and i support SB 2123 , SB 2579 , SB 2576 and agree for it to be a law.

testimony SB 2123, SB 2576, SB 2579

testimony SB 2123, SB 2576, SB 2579

Minda Goodman [mindag@hawaii.edu]

Sent: Wednesday, March 21, 2012 10:45 AM

To: JUDtestimony

Aloha Kakou,

Please support the following.

SB 2123 - Amended to include National Hotline Posting in areas where victims are usually found and Forfeiture of vehicles of "johns" upon conviction

SB 2576 -Vacating Convictions of victims of sex-trafficking

SB 2579- A services protocol for child victims of sex-trafficking. Also includes a mandatory \$5000 fine for adults who solicit sex from children.

Mahalo for your consideration,

Minda Goodman

To the Committee on Judiciary

To the Committee on Judiciary

Cindy Gaskins [cgaskins@hba.net]

Sent: Wednesday, March 21, 2012 10:32 AM

To: JUDtestimony

Cc: cwgaskins@gmail.com

Tesitfier: Cindy Gaskins,
mom, wife, friend and advocate for victims of human trafficking
Teacher, Hawaii Baptist Academy

Committee on Judiciary
Thursday, March 22, 2012
2:45 p.m.

Measure number:

SB 2576, SD1, HD1 (HSCR 1068-12)

SB 2579, SD2, HD1 (HSCR 1069-12)

SB 2123, SD2, HD1 (HSCR 1070-12)

To the Committee on Judiciary,

I want to clearly urge you to pass these identified bills. Anything connected with the intentional masterminding of treating people as property or product is utterly deplorable and wrong. Equality for persons of all ages is a guarantee of the US Constitution. Circumstances of lure, deception, threat, promises reduce people to pawns of power and greed and lead to cycles that are hard to escape. I believe these bills continue to strengthen what must happen in Hawaii. We do not want to be a haven for hurt, hopelessness or any form of slavery. Please help provide for and protect the rights of victims while punishing the perpetrators.

I ask you to pass these bills.

With my respect and call for action,
Cindy Gaskins

Testimony re: SB 2576, SD1, HD1

Testimony re: SB 2576, SD1, HD1

Juliet Begley [jbegley002@hawaii.rr.com]

Sent: Wednesday, March 21, 2012 8:29 AM

To: JUDtestimony

March 21, 2012

To the House Committee on Judiciary
Regarding SB 2576,SD1,HD1, Relating to Prostitution
To be heard Thursday, March 22, 2012, at 2:45 PM
in conference room 325

Dear Committee Members:

I find the intent of this bill that would allow persons convicted of prostitution to clear a criminal conviction to be quite beneficial in addressing the issue of prostitutes leaving the sex industry. However, the bill hamstring itself by only focusing on people who later claim they were victimized by pimps. Why subject a litmus test of such subjective proportion, when as a legal making entity this issue would be hard to prove, let alone follow judiciously in the court system? In fact this addition to the bill renders it totally unhelpful to addressing how a prostitute can change their record, should they not feel 'victimized'.

The legislation also disenfranchises transgendered women who work as prostitutes, but fail to have 'pimps', and therefore would not be able to have their record cleared as the bill is written. Why only allow a certain group to reap the benefit of being able to clear their record? And this only when they have spoken the proper 'Mea Culpa' ("my pimp made me do it")? The legislature should have an equitable way for prostitutes to be able to clear their records – one that is not subject to such whimsy.

Sincerely,

Juliet Begley

1583 Ala Amoamo
Honolulu, Hawaii 96819

Testimony for SB2576 on 3/22/2012 2:45:00 PM

Testimony for SB2576 on 3/22/2012 2:45:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, March 21, 2012 8:34 PM

To: JUDtestimony

Cc: launahele@yahoo.com

Testimony for JUD 3/22/2012 2:45:00 PM SB2576

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Benton Pang

Organization: Individual

E-mail: launahele@yahoo.com

Submitted on: 3/21/2012

Comments:

Testimony for SB2576 on 3/22/2012 2:45:00 PM

Testimony for SB2576 on 3/22/2012 2:45:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, March 22, 2012 8:24 AM

To: JUDtestimony

Cc: tanalee08@yahoo.com

Testimony for JUD 3/22/2012 2:45:00 PM SB2576

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Tana-Lee Rebhan-Kang

Organization: Individual

E-mail: tanalee08@yahoo.com

Submitted on: 3/22/2012

Comments: